

BS00155

U.S. Application No. 09/751,702 Examiner BROWN, Art Unit 2611
Response to May 18, 2006 Office Action

REMARKS

In response to the Office Action dated May 18, 2006, the Assignee respectfully requests reconsideration based on the above claim amendments and the following remarks. The Assignee respectfully submits that the pending claims distinguish over the cited references.

The United States Patent and Trademark Office (the "Office") rejected claims 1-28 under 35 U.S.C. § 103 (a) as being unpatentable over U.S. Patent 6,675,384 to Block *et al.* in view of U.S. Patent 5,710,815 to Ming.

The Assignee shows, however, that the pending claims are not obviated by the cited documents. The Assignee thus respectfully submits that the pending claims distinguish over the cited documents.

Rejection of Claims under § 103 (a)

Claims 1-28 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over U.S. Patent 6,675,384 to Block *et al.* in view of U.S. Patent 5,710,815 to Ming.

First, only claims 1-5 and 11-15 are pending. Claims 6-10 and 16-28 have been canceled without prejudice or disclaimer, so the rejection of these claims is moot.

1. The Proposed Combination of *Block* and *Ming* Does Not Teach or Suggest All the Features of the Independent Claims, so the § 103 (a) *Prima Facie* Case Fails

Claims 1-5 and 11-15 are not obvious. These claims recite, or incorporate, features for "*receiving and tabulating votes from the users that suggest alternative plots for the programming content, the processor then sending an instruction to a transmission facility to communicate alternative programming based on the tabulated votes.*" Support for such features

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may be found at least at page 9, lines 10-19 of the as-filed application. A "clean" version of independent claim 1 is reproduced below, and independent claim 11 recites similar features.

1. A system for formulating programming content, the system comprising:

a processor communicating with memory,

the processor retrieving the programming content from the memory and communicating the programming content to users, the processor receiving and tabulating votes from the users that suggest alternative plots for the programming content, the processor then sending an instruction to a transmission facility to communicate alternative programming based on the tabulated votes

Claims 1-5 and 11-15 are not obvious. The proposed combination of *Block* and *Ming* is entirely silent to "*receiving and tabulating votes from the users that suggest alternative plots for the programming content, the processor then sending an instruction to a transmission facility to communicate alternative programming based on the tabulated votes.*" The patent to *Block et al.* teaches a content rating system that can be used to block offensive programming. The patent to *Ming et al.* teaches embedding control data into a television signal that identifies an attribute of the program content. The proposed combination of *Block* and *Ming*, then, fails to teach or suggest "*receiving and tabulating votes from the users that suggest alternative plots*" and "*sending an instruction to a transmission facility to communicate alternative programming based on the tabulated votes.*"

Because the proposed combination of *Block* and *Ming* is entirely silent to such features, one of ordinary skill in the art would not think that independent claims 1 and 11 are obvious. Because claims 2-5 and 12-15 depend, respectively, from independent claims 1 and 11, these claims must distinguish for the same reasons. The Assignee thus respectfully requests that Examiner Brown remove the 35 U.S.C. § 103 (a) rejection of claims 1-5 and 11-15.

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2. Because No "Teaching, Suggestion, or Motivation" was Cited, the § 103 (a) *Prima Facie* Case for Obviousness Is Improper

The Examiner has failed to properly make a *prima facie* case for obviousness. The Examiner's *prima facie* case for obviousness must include "some teaching, suggestion, or motivation" to combine prior art that is found "either in the references themselves or in the knowledge generally available to one of ordinary skill." DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2143 (orig. 8th Edition) (hereinafter "M.P.E.P.").

Here, however, the Examiner's *prima facie* case fails to include any teaching, suggestion, or motivation. Examiner Brown cites no passage from *Block* and/or *Ming* to support the *prima facie* burden. Examiner Brown also fails to assert anything found in the knowledge generally available to one of ordinary skill. The *prima facie* case for obviousness, then, is at least improper for failing to provide any teaching, suggestion, or motivation to combine, as M.P.E.P. § 2143 requires. The Assignee thus respectfully asserts that the § 103 (a) rejection is improper and should be removed.

3. Because No Reasonable Expectation of Success was Cited, the § 103 (a) *Prima Facie* Case for Obviousness Is Improper

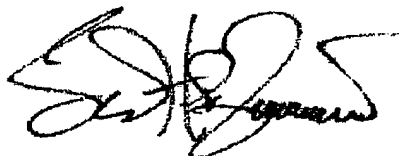
The Examiner's *prima facie* case for obviousness is defective for another reason. The Examiner's *prima facie* case for obviousness must include "a reasonable expectation of success." DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2143 (orig. 8th Edition). Here, however, the Examiner's *prima facie* case wholly fails to include any expectation of success. The Examiner, then, has failed to carry the burden, so the *prima facie* case for obviousness must fail.

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If any issues remain outstanding, the Office is requested to contact the undersigned at
(919) 387-6907 or scott@wzpatents.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized flourish at the end.

Scott P. Zimmerman
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